



## SECTION VI

### CONSULTANT CONTRACTS

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#### GENERAL

If the local agency is not adequately staffed to provide the necessary engineering (including utility negotiations), they may engage a consulting engineer to provide professional services. The cost of both design and construction related services work by consultants is eligible for federal participation provided that prior approval of the contracts by MoDOT is received. Federal participation in the cost of construction engineering is limited to 15% ~~(5% for enhancement projects)~~ of the net federal participating construction costs, whether performed by consultant, in-house, or both for all contracts statewide. Construction engineering can be greater than 15% if requested by the local agency on a case by case basis prior to ~~the award of the contract~~construction engineering. Inspection services may be included in a design contract. Preliminary engineering charges are permitted through the construction contract award stage. Charges after the award of contract are considered to be construction engineering. Right of Way Acquisition (RWA) is defined as all ROW activities except right of way estimates, title work, and description writing. All RWA shall be included in a separated contract. On federal-aid projects where RWA is to be performed, if the project sponsor ~~wishes~~ chooses to receive federal reimbursement for RWA, the appropriate approvals from MoDOT are necessary. MoDOT district staff will review / approve the personnel (or firms) that will be performing the RWA.

After execution by the local agency and consultant, three (3) copies of the contract are submitted to MoDOT for review and approval. The standardized contract format developed by MoDOT in [Figure VI-1](#) is required.

The local agency should include a letter stating the necessity for utilizing a consultant for the work. If the local agency proposes to engage a consultant who has not been previously utilized by another local agency or MoDOT for the particular type of work involved, the local agency should submit a brochure or other information which outlines the qualifications of the firm's employees and recent past experience in similar work. It is not permissible for a consultant to contract with both the local agency and the contractor on the same project.

If a local agency engages a consultant to conduct an environmental study, the consultant is required to fill out a disclosure statement specifying the consultant has no financial or other interest in the outcome of the project. Additionally, the local agency cannot engage the same consultant for the environmental document and the final design during one contract negotiation process. The same consultant may be used but the local agency must utilize their selection process for the later stages.

All consultants receiving individual awards for \$100,000 or more and all subrecipients must certify that the organization and its principals are not suspended or debarred. Each local agency may, but is not required to, check the Nonprocurement List. Copies may be obtained by purchasing a yearly subscription from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238. The electronic version can be accessed on the Internet at <http://www.arnet.gov/epls>. The user will



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be required to record their name and organization for purposes of the Computer Matching and Privacy Act of 1988.

All required independent assurance samples and tests will be performed by MoDOT, so this work should not be included in consultant contracts. However, required project tests are the local agency's responsibility. Should the local agency not have the required staff to administer these project tests, a consultant testing firm can be obtained and costs will be eligible for federal reimbursement.

#### **SUBCONSULTANTS**

##### **Subconsultant cost exceeding \$25,000**

If the consultant is using a subconsultant with a cost exceeding \$25,000, then the subconsultant shall include a detailed estimate of cost as shown on Fig. VI-1-11 and an overhead rate breakdown.

##### **Subconsultant cost NOT exceeding \$25,000**

If the consultant is using a subconsultant with a cost that does not exceed \$25,000, then a letter from the subconsultant shall be included that quotes the subconsultant's cost shown in Attachment A of the contract.

#### **SELECTION PROCEDURES**

Each local agency must submit to MoDOT a statement of procedures that they use to evaluate and select consultants. Attached (Figure VI-2) lists criteria that should be considered when selecting a consultant. These criteria must meet minimum FHWA requirements and be in compliance with Sections 8.289 and 8.291, RSMo (Figure VI-3). The local agency may use similar procedures or develop their own written procedures. Of particular importance is a requirement that three or more firms be considered before the final selection is made. It is not necessary to interview all three firms. Price quotations shall not be requested for consideration prior to selecting a firm. If a local agency cannot negotiate a reasonable price with the consultant selected they can cease negotiations and select a different firm. The local agency should provide written documentation of the selection procedures used and the names of the three or more firms considered when a contract is submitted for approval. If the local agency chooses to cite the state statute, then the following can be written:

"We have considered the following three firms under procedures outlined in Missouri Law (1984 RSMo Sections 8.285 to 8.291)."

#### **SCOPE OF SERVICES**

The local agency should determine the scope of services when issuing an invitation for consultants to submit proposals. The scope of services should be detailed and project specific. In addition to the



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customary information contained in a scope of services, it is suggested that the following items be included:

1. design standards, such as roadway and bridge width and surface type;
2. whether MoDOT design specifications will be used;
3. for hydraulics, the design frequency required for the bridge, also an investigation of the effects of higher frequency events;
4. for bridges, valley sections upstream and downstream to be analyzed and streambed profile provided 1000 feet (300m) up and down;
5. when applicable, an investigation of Federal Emergency Management Agency's requirements;
6. provision for 404 Permits, archaeological investigations and other environmental matters as judged necessary; and
7. degree of construction inspection services to be included in the engineering service contract, if any.

#### **BASIS OF PAYMENT**

The following methods may be used as the basis of payment in a contract:

1. actual cost plus fixed fee; and
2. specific rates of pay (for emergency situations only).

The most common basis of payment is actual cost plus fixed fee. Types which cannot be approved are percentage of construction cost, actual cost plus a percentage, and actual cost times a multiplier.

It is often necessary for a consultant to subcontract work, such as surveying, core drilling, materials testing, cultural resource documentation, and environmental documentation. Subcontractors should be shown in the contract and costs passed through to the local agency at actual cost. Prompt payment of subcontractors is required and any retainage cannot be passed through to the subcontractors.

#### **EVALUATIONS**

Before a contract can be approved, it will be necessary to perform and document a technical evaluation to determine that the estimated man-hours are reasonable. In addition, an audit evaluation will need to be performed for some contracts to determine that cost aspects are reasonable and, in particular, that the cost estimate and overhead rates contain only items allowable under federal



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guidelines. Only those contracts that fall within the guidelines established for pre-negotiation audits by Audit and Business Analysis, MoDOT, will need to have such an audit evaluation.

#### CONTRACT SUBMITTAL

The contract format illustrated in [Figure VI-1](#) is required. Following is a checklist of items which should be included in or submitted with the contract:

1. local agency's statement regarding the necessity for utilizing a consultant for the work;
2. procedures used to evaluate and select consultants and a listing of firms considered;
3. qualifications and experience resume' for consultant, if consultant has not been previously utilized by a county, city or MoDOT;
4. a method for modifying the contract (extra work or modified work or any change in the contract fee requires the approval of a supplemental agreement by MoDOT and FHWA prior to performing the work or incurring the added cost) ([Article II](#));
5. a statement that a local agency employee will be responsible for and in direct control of the construction contract even though a consultant may perform inspection work ([Article III-G](#));
6. a time reference after which all work under the contract will be considered complete ([Article IV](#));
7. a statement that specifies the basis for allowability of costs will be 23 CFR, Part 172 and 48 CFR, Part 31 ([Article VI-F](#));
8. give residual credit for specialized equipment purchased for the contract ([Article VI-H](#));
9. the following covenant against contingent fees in the contract ([Article VII](#)):

"The consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the local agency shall have the right to annul this contract without liability, or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee plus reasonable attorney's fees."



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10. an agreement for the retention of records for a period of three years after the consultant receives payment of their final invoice from the local agency ([Article X](#));
11. an agreement to allow MoDOT and FHWA and other authorized federal agencies to examine records pertaining to the project and costs ([Article X](#));
12. ownership of engineering documents by local agency ([Article XI](#));
13. procedure for settling disputes arising under the contract ([Article XIII](#));
14. a nondiscrimination provision ([Article XVII](#));
15. a cost breakdown as follows ([Attachment A](#)):
  - a. man-hours by pay grade and general work function;
  - b. basic rates of pay;
  - c. overhead rates, projected for the period of performance;
  - d. other direct costs (travel, subsistence, etc.);
  - e. profit (lump sum) or fixed fee (actual cost);
  - f. subcontracts;
  - g. contract ceiling;
16. a breakdown of the consultant's overhead rates ([Attachment B](#)) (See [Figure VI-6](#) for a listing of common unallowable items);
17. debarment certifications as an attachment to the contract (samples are attached in the standardized contract) ([Attachment C & D](#));
18. if desired, a stipulation by the local agency that a certain percentage, usually 5%, will be held as a retainage until the final invoice has been received.
19. if applicable, when the completed project is turned over to MoDOT, the ESC shall indicate that the design must meet the requirements specified in MoDOT's Project Development manuals.



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This checklist will help to insure that all necessary documentation related to the project is completed in a timely manner.

#### SUPPLEMENTAL AGREEMENTS

Changes to a contract should be made through a supplemental agreement. **No work is to be initiated until federal funding for the supplemental agreement has been approved (obligated) by FHWA and MoDOT has notified the local agency to proceed.** If a fee is to be changed, approval is needed before the original ceiling is exceeded. The format may be by letter agreement, signed by both parties. It is desirable to include the original fee in the supplement as well as the revised fee. If the reasons in the supplement are not self-explanatory, additional justification should be included when submitting for approval. No changes in the fixed fee portion of a cost plus fixed fee contract will be approved in a supplemental agreement unless it is determined that the scope of work has changed significantly. [Figure VI-4](#) contains a sample copy of a supplemental agreement.

#### CONSULTANT PERFORMANCE APPRAISAL

Local agencies with the assistance of MoDOT and the contractor are requested to complete the Consultant Performance Appraisal ([Figure VI-5](#)) after project completion. If any questions arise concerning the Consultant Performance Appraisal, the local agency should contact the MoDOT district representative for assistance.